

## The Courtroom Interpreter: A User's Guide and Checklist

This piece is adapted from an article by Judge Lynn W. Davis, *Utah Bar Journal* 9 (February 1996):26.

### Pretrial Conference Considerations:<sup>1</sup>

- ❑ Appoint interpreters at the earliest stage to afford preparation.
- ❑ Consider the possible need for multiple interpreters.<sup>2</sup>
- ❑ Remember the fatigue factor and necessity of recesses.
- ❑ Be aware of and caution the participants regarding speed and simultaneity of conversation.
- ❑ Discuss interpreter modes—simultaneous, consecutive, and sight translation.
- ❑ Allow the interpreter contact with the accused in order to:
  1. Explain the interpreter role, including the fact that everything will be interpreted, including vulgarities;
  2. Confirm education level;
  3. Become familiar with dialects, jargon, regionalisms, and colloquial expressions; and
  4. Explain the role of the interpreter and emphasize that interpreting is not an advocate role.
- ❑ Supply to the interpreter all written documents that will need to be sight translated at the trial and advise the interpreter of experts who will testify at trial.
- ❑ Lawyers representing non-English speakers should always determine the immigration/naturalization status of their clients. (What appears as a great plea bargain for the moment may result in the deportation of the client or otherwise disturb the client's legal status.)

### Trial Considerations:

- ❑ Provide necessary physical accommodations. Microphone and sound equipment may be needed to hear speakers. Interpreters should stand or sit where they will not block the view of the judge, jury, counsel, or accused and must be able to hear every speaker.<sup>3</sup>
- ❑ Certify or qualify and voir dire interpreter (see **Voir Dire to Determine an Interpreter's Qualifications**).

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<sup>1</sup> It is invaluable to include the interpreter at pretrial. While it may not be as necessary for a routinized arraignment, preparation for a hearing, motion, or trial is imperative. Inclusion of an interpreter at pretrial allows her to understand the case, examine the file, examine written documents, and be advised of the extent of expert witnesses and field of technical language. At pretrial an interpreter can be advised of specific documents that might be used at trial, such as written confessions or affidavits.

<sup>2</sup> Multiple interpreters are necessary in lengthy or complex cases. Many states now use two courtroom interpreters: one for client-attorney conversations and the other to interpret for the record. It is also obvious that multiple interpreters are necessary with multiple non-English-speaking defendants. The number of interpreters can be reduced by the use of headsets.

<sup>3</sup> Interpreters ought to have access to drinking water at counsel table or nearby without interruption and ought to be positioned to maintain eye contact with parties, the lawyers, and the judge. "The interpreter shall be positioned in the courtroom to hear the witness or party but shall not block the view of the judge, jury, or counsel." CJA 3-306 (2) (C) (vii).

- ❑ Administer oath (see **Interpreters Oath**).
- ❑ Allow counsel to take exception to qualification.
- ❑ Always refer to instructions to the jury, parties, and witnesses regarding the role of the interpreter.<sup>4</sup>
- ❑ Caution participants about speed, clarity, and simultaneity of speech.
- ❑ Take breaks to avoid fatigue.
- ❑ Watch for the interpreter improprieties (see **Interpreter Improprieties**).
- ❑ Consider the unique requirements of an interpreter for the deaf or hearing impaired.
- ❑ Make and preserve a record: audio, if speaker does not speak English; audio/visual, if speaker is deaf or hearing impaired.

Many of these questions were drawn from two sources: (1) Heather k. Van Nuys and Joanne I. Moore, "Using an Interpreter in Court," *Washington State Bar News*, May 1987: 13, and (2) a document entitled "Recommended procedures for finding Certified Court Interpreters and Voir Dire Procedures to Establish the Qualifications of a Noncertified Interpreter," circulated for review by The California Judicial Council.

### **Interpreters Oath**

The court should make a preliminary determination on the basis of the interpreter's testimony that the interpreter is qualified and then have the following oath administered: "Do you solemnly swear that you will well and truly and to the best of your ability discharge the duties of interpreter and translate from English into \_\_\_\_\_, and from \_\_\_\_\_ into English such questions and answers as shall be put to the witness and received from the witness in the case now pending before the Court, so help you God?"

### **Interpreter Improprieties**

Judges need to watch for interpreter improprieties. For example, an interpreter should not:

1. Improperly influence an answer by head nodding, facial expressions;
2. Engage in lengthy exchanges with the accused;
3. Otherwise lead the witness;
4. Answer questions, give advice, etc.;
5. arbitrate or mediate a resolution of a case. Lawyers and judges should address the parties, not the interpreter; and
6. Speak in the first person when speaking for the accused. For instance the interpreter should say "I didn't do it," not "He said he didn't do it."

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A preliminary instruction should be given to the jury to advise the jurors of the important role of the important role of the interpreter: he or she is neither an advocate for the accused nor part of the defense team.

## SCREENING CHECKLIST FOR FOREIGN LANGUAGE INTERPRETERS

All interpreters should be given an oath for accuracy and fairness before they begin their work for the court. Before the oath is administered, some inquiry by the judge or court administrator's office should be made regarding an interpreter's basic proficiency. Simple, but fundamental questions should be asked such as the following:

QUESTIONS	YES	NO
1. Do you have any particular training or credentials as an interpreter? If so, what. ( e.g., State certification card from SCAO; Federal Court certification; certified by immigration courts; certified by the FBI; list of references from other courts; attendance at SCAO orientation and training programs; interpreter credentials from other national organizations such as Berlitz, National Association of Judicial Interpreters and Translators (NAJIT) etc.)		
2. What is your native language?		
3. How did you learn English/or foreign language?		
4. What was the highest grade you completed in school?		
5. Have you spent any time in a foreign country? Do you speak the language of the country you spent time in?		
6. Did you formally study either language in school? Extent?		
7. How many times have you interpreted in court?		
8. Do you do conference interpreting?		
9. Have you interpreted for this type of hearing or trial before? Extent?		
10. Are you familiar with legal terms in both languages?		
11. Have you had an opportunity to speak with the non- English or limited English speaking party(ies)?		
12. If yes, were there any communication problems?		
13. Are you familiar with the dialectical or idiomatic peculiarities of the non-English or limited-English speaker?		

QUESTIONS		YES	NO
14.	Can you interpret simultaneously?		
15.	Can you interpret consecutively?		
16.	Do you have any teaching or language training experience?		
17.	Have you interpreted in noncourt settings? What type?		
18.	Have you ever had your interpreting skills evaluated? When, by whom?		
19.	Have you ever been qualified by a judge to interpret in court?		
20.	Have you ever been disqualified from interpreting in any court or administrative hearing?		
21.	Have you had training in the Michigan Code of Professional Conduct for Interpreters in the Courts?		

**EXPLANATIONS:**